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REMARKS

Claims 12-17 and 19 are currently pending in the above application.

Claims 12, 14, and 15 stand rejected under 35 U.S.C. §102(b) as being anticipated by Hudkins et al. (U.S. Patent No. 6,296,733). Applicants respectfully traverse the Examiner's rejection.

Hudkins et al. discloses a floor mat, and method for making the floor mat, for covering a motor vehicle flooring system having a plurality of fibers. The floor mat includes a thermoplastic layer having first and second surfaces and a plurality of projections extending from the second surface. The thermoplastic layer is said to be recyclable and may be coupled to, or used without, a cover layer, depending upon the application.

As described in paragraph [0005] of the background section of the present application, typical throw in mats lack the feel of rubber mats that is highly desirable among consumers. In other words, contrary to the Examiner's conclusion on the bottom of page 2, it is not reasonable to presume that thermoplastic materials used in auto floor mats are inherently rubber-like, they are more likely not rubber-like in feel. A thermoplastic material, by definition, is a material that softens and flows. Thermoplastic materials can be reheated and reformed because the polymer chains are not crosslinked. Thus, thermoplastic materials may be relatively hard and brittle at lower temperatures and relatively soft and flexible at higher temperatures, depending upon their composition. Conversely, a rubber-like mat has a rubber or flexible-like feel at room temperature (i.e. temperatures where the mat would be used, as in a car) and may either be thermoplastic or thermosetting in nature. Thus, the Hudkins mat may be thermoplastic in nature, flexible, and still not be considered rubber-like as claimed in the present invention. In other words, it does not follow that a thermoplastic material is inherently rubber-like, contrary to the Examiner's conclusion.

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The present invention is both rubber-like and thermoplastic, which is not described in Hudkins, which is simply thermoplastic. As the Examiner's rationale for rejecting claim 12 is premised upon this inherency assumption, and given that Applicants have proven that it is not inherent, Applicants respectfully submit that the Examiner's reasoning for rejecting claim 12 is not sufficient to support the rejection. Hence, contrary to the Examiner's conclusion, claim 12 is not anticipated by Hudkins. Reconsideration of claim 12 is thus respectfully requested.

Further, because the thermoplastic mat in Hudkins is not inherently rubber-like, the Hudkins reference cannot anticipate claim 14, in which recyclable, rubber-like thermoplastic polymer comprises a first ethylene-octene copolymer formed using a metallocene catalyst and having a melt index of approximately 25-35 and a density of approximately 0.7 to 1.0. Similarly, Hudkins does not describe a mixture of recyclable polymers, each having different melt indexes, as disclosed in claim 15. Thus, claims 14 and 15 are not anticipated by Hudkins. Reconsideration of claims 14 and 15 are thus respectfully requested.

Claims 12, 14 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable by Hudkins et al. (U.S. Patent No. 6,296,733) Claims 13, 16, 17 and 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable by Hudkins et al. (U.S. Patent No. 6,296,733) as set forth in section 9 of the last Office Action. Applicants respectfully traverse the Examiner's rejections.

Section 2143 of the Manual of Patent Examining Procedure states that three basic criteria must be met for establishing a *prima facie* case of obviousness, stating:

"First, there must some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art

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reference (or references when combined) must teach all of the claim limitations."

"If the examiner does not establish a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." Section 2142 MPEP, ch. 2100, p. 110. "When the references cited by the Examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned."¹ One cannot use hindsight reconstruction, picking and choosing among isolated disclosures in the prior art, to deny that the claimed invention is unobvious.²

In the present case, the Examiner has not establish a *prima facie* case of obviousness because Hudkins does not teach all of the limitations of claim 12, namely the forming of a recyclable, rubber-like thermoplastic backing material; the coupling of the recyclable, rubber-like thermoplastic backing material to a second side of the primary backing layer to form the throw in mat; the introduction of the thrown-in mat to a mat press; the pressing of the throw-in mat at a desired temperature and a desired pressure for a predetermined period of time within the mat press to form the recyclable, rubber-like thermoplastic backing material to a desired shape; the removal of the throw-in mat from the mat press; nor the cooling of the throw-in mat in a cold press. Hence, the rejection of claim 12, and dependent claims 13-17 and 19 that depend from claim 12, is improper.

Further, there was no expectation of success for modifying Hudkins, as the Examiner suggests, because Hudkins was only concerned with providing a low cost floor covering that effectively minimized slippage on carpeted floor surfaces (see Column 1, lines 50-54), it was not concerned with the "feel", and more specifically a "rubber-like feel" of the matting itself. Therefore, the selection of raw materials would not be dictated by the finished feel of the matting, but by other factors not relevant to claim 12. Thus, claim 12 would not be obvious in view of Hudkins, nor would dependent claims 13-17 and 19. Reconsideration of claims 12-17 and 19 is thus respectfully requested.

¹ *In re Ochiai*, 71 F.3d 1565, 37 U.S.P.Q.2d 1127 (Fed. Cir. 1995), *citing In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

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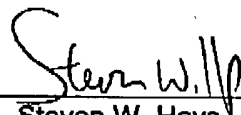
With regards to the Examiner's statement in paragraph 6 of the Office Action regarding traversing the Official Notice, Applicants respectfully disagree. Applicants specifically traversed the Examiner's rejection on page 1 of the Remarks Section and modified the claims at issue to emphasize the distinction. The process steps are unique to this particular invention.

Further, with regards to Page 4, first full paragraph of the Office Action, Applicants respectfully remind the Examiner that because Hudkins does not teach a rubber-like thermoplastic polymer, the auxiliaries would not have been obvious in the to add in the Hudkins reference because Hudkins is not forming the same kind of polymeric material. Reconsideration of claims 13, 16, 17 and 19 in lieu of these additional comments is thus respectfully suggested.

The Examiner is invited to telephone the Applicants' undersigned attorney at (248) 223-9500 if any unresolved matters remain.

Respectfully submitted,

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2 In re Fine, 837 F.2d at 1075.